FINAL REPORT

OF THE

Congressional Committee

UPON THE QUESTION OF

RECONSTRUCTION.

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Mr. FESSENDEN submitted the following

REPORT.

The Joint Committee of the two Houses of Congress, appointed under the concurrent resolution of December 13, 1865, *with direction "to inquire into the condition of the States which formed the so-called Confederate States of America, and report whether they, or any of them, are entitled to be represented in either House of Congress, with leave to report by bill or otherwise," ask leave to report:*

That they have attended to the duty assigned them, as assiduously as other duties would permit, and now submit to Congress, as the result of their deliberations, a resolution proposing amendments to the Constitution, and two bills, of which they recommend the adoption.

Before proceeding to set forth in detail their reasons for the conclusion to which, after great deliberation, your committee have arrived, they beg leave to advert, briefly to the course of proceedings they found it necessary to adopt, and to explain the reasons therefor.

The resolutions under which your committee was appointed, directed them to inquire into the condition of the Confederate States, and report whether they were entitled to representation in Congress. It is obvious that such an investigation, covering so large an extent of territory, and involving so many important considerations, must necessarily require no trifling labor, and con-

sume a very considerable amount of time. It must embrace the condition in which those States were left at the close of the war; the measures which have been taken towards the re-organization of civil government, and the disposition of the people towards the United States; in a word, their fitness to take an active part in the administration of national affairs.

As to their condition at the close of the rebellion, the evidence is open to all, and admits of no dispute. They were in the state of utter exhaustion. Having protracted their struggle against federal authority, until all hope of successful resistance had ceased, and laid down their arms, only because there was no longer any power to use them, the people of those States, were left bankrupt in their public finances, and shorn of the private wealth which had before given them power and influence. They were also necessarily in a state of complete anarchy, without governments, and without the power to frame governments, except by the permission of those who had been successful in the war. The President of the United States, in the proclamations under which he appointed Provisional Governors, and in his various communications to them, has, in exact terms, recognized the fact, that the people of those States were, when the rebellion was crushed, "deprived of all civil government, and must proceed to organize anew." In his conversation with Mr. Stearns, of Massachusetts, certified by himself, President Johnson said: "The State Institutions are prostrated, laid out on the ground, and they must be taken up and adapted to the progress of events."

Finding the Southern States in this condition, and Congress having failed to provide for the contingency, his duty was obvious. As President of the United States, he had no power, except to execute the laws of the land as Chief Magistrate. These laws gave him no authority over the subject of reorganization; but by the Constitution, he was Commander-in-Chief of the Army and Navy of the United States. These Confederate States embraced a portion of the people of the Union, who had been in a state of revolt, but had been reduced to obedience by force of arms. They were in an abnormal condition, without civil government, without commercial connections, without national or international relations, and subject only to martial law. By withdrawing their representatives in Congress, by renouncing the privilege of representation, by organizing a separate government, and by levying war against the United States, they destroyed their State Constitutions in respect to the vital principal which connected their respective States with the Union, and secured their Federal relations; and nothing of those constitutions was left, of which the United States were bound to take notice. For four years, they had a *de facto* government, but it was usurped and illegal. They chose the tribunal of arms, wherein to decide whether or not it should be legalized, and they were defeated. At the close of the rebellion, therefore, the people

of the rebellious States were found, as the President expresses it, deprived of all civil government.

Under this state of affairs, it was plainly the duty of the President to enforce existing national laws, and to establish, as far as he could, such a system of government as might be provided for by existing national statutes. As Commander-in-Chief of a victorious army, it was his duty under the Law of Nations and the army regulations to restore order, to preserve property, and to protect the people against violence from any quarter, until provision should be made by law for their government. He might, as President, assemble Congress and submit the whole matter to the law-making power, or he might continue military supervision and control, until Congress should assemble on its regular appointed day. Selecting the latter alternative, he proceeded by virtue of his power as Commander-in-Chief, to appoint provisional Governors over the revolted States. These were regularly commissioned, and their compensation was paid, as the Secretary of War states, "from the appropriation for army contingencies, because the duties performed by the parties were regarded as of a temporary character, ancillary to the withdrawal of military force, the disbandment of armies, and the reduction of military expenditure, by provisional organization for the protection of civil rights, the preservation of peace, and to take the place of armed force in the respective States."

It cannot, we think, be contended that these Governors possessed or could exercise any but military authority. They had no power to organize civil governments, nor to exercise any authority, except that which inhered in their own persons under their commissions. Neither had the President, as Commander-in-Chief, any other than military power. But he was in exclusive possession of the military authority. It was for him to decide, how far he would exercise it, how far he would relax it, when and on what terms he would withdraw it. He might properly permit the people to assemble, and to initiate local governments, and to execute such local laws as they might choose to frame, not inconsistent with, nor in opposition to the laws of the United States. And, if satisfied that they might safely be left to themselves, he might withdraw the military forces altogether, and leave the people of any or all of these States, to govern themselves without his interference. In the language of the Secretary of State, in his telegram to the provisional Governor of Georgia, dated October 28, 1865, he might "recognize the people of any State as having resumed the relations of loyalty to the Union," and act, in his military capacity, on this hypothesis. All this was within his own discretion as military Commander. But it was not for him to decide upon the nature or effect of any system of government which the people of these States might see fit to adopt. This power is lodged by the Constitution in the Congress of the United States—that branch of the Government in which is vested the authority to fix the political relations of the States to the Union,

whose duty it is to guarantee to each State a republican form of government, and to protect each and all of them against foreign or domestic violence, and against each other. We cannot, therefore, regard the various acts of the President in relation to the formation of local governments in the insurrectionary States, and the conditions imposed by him upon their action, in any other light than as intimations to the people that, as Commander-in-Chief of the army, he would consent to withdraw military rule just in proportion as they should, by their acts, manifest a disposition to preserve order among themselves, establish governments denoting loyalty to the Union, and exhibit a settled determination to return to their allegiance—leaving with the law-making power, to fix the terms of their final restoration to all their rights and privileges as States of the Union. That this was the view of his power taken by the President, is evident from expressions to that effect, in the communications of the Secretary of State, to the various provisional Governors, and the repeated declarations of the President himself. Any other supposition inconsistent with this would impute to the President designs of encroachment upon a co-ordinate branch of the Government, which should not be lightly attributed to the Chief Magistrate of the Nation.

When Congress assembled in December last, the people of most of the States lately in rebellion had, under the advice of the President, organized local governments, and some of them had acceded to the terms proposed by him. In his annual message he stated in general terms what had been done, but he did not see fit to communicate the details for the information of Congress. While in this and in a subsequent message the President urged the speedy restoration of these States, and expressed the opinion that their condition was such as to justify their restoration, yet it is quite obvious that Congress must either have acted blindly on that opinion of the President, or proceeded to obtain the information requisite for intelligent action on the subject. The impropriety of proceeding wholly on the judgment of any one man, however exalted his station, in a matter involving the welfare of the Republic in all future time, or of adopting any plan, coming from any source, without fully understanding all its bearings and comprehending its full effect, was apparent. The first step, therefore, was to obtain the required information. A call was accordingly made on the President for the information in his possession as to what had been done, in order that Congress might judge for itself as to the grounds of the belief expressed by him in the fitness of States recently in rebellion to participate fully in the conduct of national affairs. This information was not immediately communicated. When the response was finally made, some six weeks after your committee had been in actual session, it was found that the evidence upon which the President seemed to have based his suggestions was incomplete and unsatisfactory. Authenticated copies of the new constitutions and ordi-

nances adopted by the conventions in three of the States had been submitted; extracts from newspapers furnished scanty information as to the action of one other State, and nothing appears to have been communicated as to the remainder. There was no evidence of the loyalty of those who had participated in these conventions, and in one State alone was any proposition made to submit the action of the conventions to the final judgment of the people.

Failing to obtain the desired information, and left to grope for light wherever it might be found, your committee did not deem it either advisable or safe to adopt, without further examination, the suggestions of the President, more especially as he had not deemed it expedient to remove the military force, to suspend martial law, or to restore the writ of *habeas corpus*, but still thought it necessary to exercise over the people of the rebellious States his military power and jurisdiction. This conclusion derived still greater force from the fact, undisputed, that in all these States, except Tennessee, and perhaps Arkansas, the elections which were held for State officers and members of Congress had resulted almost universally in the defeat of candidates who had been true to the Union, and in the election of notorious and unpardoned rebels—men who could not take the prescribed oath of office, and who made no secret of their hostility to the Government and the people of the United States.

Under these circumstances, anything like hasty action would have been as dangerous as it was obviously unwise. It appeared to your committee that but one course remained, viz: to investigate carefully and thoroughly the state of feeling and opinion existing among the people of these States; to ascertain how far their pretended loyalty could be relied upon, and thence to infer whether it would be safe to admit them at once to a full participation in the Government they had fought for four years to destroy. It was an equally important inquiry whether their restoration to their former relations with the United States should only be granted upon certain conditions and guarantees, which would effectually secure the nation against a recurrence of evils so disastrous as those from which it had escaped at so enormous a sacrifice.

To obtain the necessary information recourse could only be had to the examination of witnesses whose position had given them the best means of forming an accurate judgment, who could state facts from their own observation, and whose character and standing afforded the best evidence of their truthfulness and impartiality. A work like this, covering so large an extent of territory, and embracing such complicated and extensive inquiries, necessarily required much time and labor. To shorten the time as much as possible, the work was divided and placed in the hands of four subcommittees, who have been diligently employed in its accomplishment. The results of their labors has been heretofore submitted, and the country will judge how far they sustain the President's

views, and how far they justify the conclusions to which your committee have finally arrived.

A claim for the immediate admission of Senators and Representatives from the so-called Confederate States has been urged, which seems to your committee not to be founded either in reason or in law, and which cannot be passed without comment. Stated in a few words, it amounts to this: That, inasmuch as the lately insurgent States had no legal right to separate themselves from the Union, they still retain their positions as States, and consequently the people thereof have a right to immediate representation in Congress, without the imposition of any conditions whatever; and further, that until such admission, Congress has no right to tax them for the support of the Government. It has even been contended that, until such admission, all legislation affecting their interests is, if not unconstitutional, at least unjustifiable and oppressive.

It is believed by your committee, that all these propositions are not only wholly untenable, but, if admitted, would tend to the destruction of the Government.

It must not be forgotten that the people of these States, without justification or excuse, rose in insurrection against the United States. They deliberately abolished their State Governments, so far as the same connected them politically with the Union as members thereof under the Constitution. They deliberately renounced their allegiance to the Federal Government, and proceeded to establish an independent government for themselves. In the prosecution of this enterprise they seized the national forts, arsenals, dock-yards, and other public property within their borders, drove out from among them those who remained true to the Union, and heaped every imaginable insult and injury upon the United States and its citizens.

Finally they opened hostilities and levied war against the Government. They continued this war for four years with the most determined and malignant spirit, killing in battle and otherwise large numbers of loyal people, destroying the property of loyal citizens on the sea and on the land, and entailing on the Government an enormous debt, incurred to sustain its rightful authority. Whether legally and constitutionally or not, they did in fact withdraw from the Union, and made themselves subjects of another government of their own creation; and they only yielded when, after a long, bloody and wasting war, they were compelled by utter exhaustion to lay down their arms; and this they did, not willingly, but declaring that they yielded because they could no longer resist, affording no evidence whatever of repentance for their crime, and expressing no regret except that they had no longer the power to continue the desperate struggle.

It cannot, we think, be denied by any one having a tolerable acquaintance with public law, that the war thus waged was a civil

war of the greatest magnitude. The people waging it were necessarily subject to all the rules which, by the law of nations, control a contest of that character, and to all the legitimate consequences following it. One of those consequences was, that within the limits prescribed by humanity, the conquered rebels were at the mercy of the conquerers. That a Government thus outraged had a most perfect right to exact indemnity for the injuries done, and security against the recurrence of such outrages in the future, would seem too clear for dispute. What the nature of that security should be, what proof should be required of a return to allegiance, what time should elapse before a people thus demoralized should be restored in full to the enjoyment of political rights and privileges, are questions for the law-making power to decide, and that decision must depend on grave considerations of the public safety and the general welfare.

It is moreover contended, and with apparent gravity, that from the peculiar nature and character of our Government, no such right on the part of the conqueror can exist; that from the moment when rebellion lays down its arms, and actual hostilities cease, all political rights of rebellious communities are at once restored; that because the people of a State of the Union were once an organized community within the Union they necessarily so remain, and their right to be represented in Congress at any and all times, and to participate in the government of the country under all circumstances, admits of neither question nor dispute. If this is indeed true, then is the Government of the United States powerless for its own protection, and flagrant rebellion carried to the extreme of civil war is a pastime, which any State may play at, not only certain that it can loose nothing, in any event, but may even be the gainer by defeat. If rebellion succeeds, it accomplishes its purpose and destroys the Government. If it fails the war has been barren of results, and the battle may be still fought out in the legislative halls of the country. Treason defeated in the field has only to take possession of Congress and the Cabinet.

Your committee does not deem it either necessary or proper to discuss the question whether the late Confederate States are still States of this Union, or can ever be otherwise. Granting this profitless abstraction, about which so many words have been wasted, it by no means follows that the people of those States may not place themselves in a condition to abrogate the powers and privileges incident to a State of the Union, and deprive themselves of all pretence of right to exercise those powers and enjoy those privileges. A State within the Union has obligations to discharge as a member of the Union. It must submit to Federal laws and uphold Federal authority. It must have a government, republican in form, under and by which it is connected with the General Government, and through which it can discharge its obligations. It is more than idle, it is a mockery, to contend that a people who have thrown off their

allegiance, destroyed the local government which bound their States to the Union as members thereof, defied its authority, refused to execute its laws, and abrogated every provision which gave them political rights within the Union, still retain through all the perfect and entire right to resume, at their own will and pleasure, all their privileges within the Union, and especially to participate in its government and to control the conduct of its affairs. To admit such a principle for one moment, would be to declare that treason is always master, and loyalty a blunder. Such a principle is void by its very nature and essence, because inconsistent with the theory of government and fatal to its very existence.

On the contrary, we assert that no portion of the people of this country, whether in State or Territory, have the right, while remaining on its soil, to withdraw from or reject the authority of the United States. They must obey its laws as paramount and acknowledge its jurisdiction. They have no right to secede; and while they can destroy their State governments and place themselves beyond the pale of the Union, so far as the exercise of State privileges is concerned, they cannot escape the obligations imposed upon them by the Constitution and the laws, nor impair the exercise of national authority. The Constitution, it will be observed, does not act upon States, as such, but upon the people. While, therefore the people cannot escape its authority, the States may, through the act of their people, cease to exist in an organized form, and thus dissolve their political relations with the United States.

That taxation should be only with the consent of the taxed, through their own representatives, is a cardinal principle of all free governments; but it is not true that taxation and representation must go together under all circumstances, and at every moment of time. The people of the District of Columbia, and of the Territories are taxed, although not represented in Congress. If it is true that the people of the so-called Confederate States have no right to throw off the authority of the United States, it is equally true that they are bound at all times to share the burdens of government. They cannot either legally or equitably refuse to bear their just proportion of these burdens by voluntarily abdicating their rights and privileges as States of the Union, and refusing to be represented in the councils of the nation, much less by rebellion against national authority and levying war. To hold that by so doing they could escape taxation, would be to offer a premium for insurrection, to reward instead of punishing treason.

To hold that as soon as Government is restored to its full authority, it can be allowed no time to secure itself against similar wrongs in the future, or else omit the ordinary exercise of its constitutional power to compel equal contribution from all towards the expenses of the Government, would be unreasonable in itself and unjust to the nation. It is sufficient to reply that the loss of representation by the people of the insurrectionary States, was their own voluntary

choice. They might abandon their privileges, but they could not escape their obligations. And surely they have no right to complain, if, before resuming those privileges, and while the people of the United States are devising measures for the public safety, rendered necessary by the act of those who thus disfranchised themselves, they are compelled to contribute their just proportion of the general burden of taxation incurred by their wickedness and folly.

Equally absurd is the pretence that the legislative authority of the nation must be inoperative, so far as they are concerned, while they, by their own act, have lost the right to take part in it. Such a proposition carries its own refutation on its face.

While thus exposing fallacies, which, as your committee believe, are resorted to for the purpose of misleading the people, and distracting their attention from the questions at issue, we freely admit that such a condition of things should be brought, if possible, to a speedy termination. It is most desirable that the union of all the States should become perfect at the earliest moment, consistent with the peace and welfare of the nation, that all these States should become fully represented in the national councils, and take their share in the legislation of the country. The possession and exercise of more than its just share of power by any section is injurious, as well to that section as to all others. Its tendency is distracting and demoralizing, and such a state of affairs is only to be tolerated on the ground of a necessary regard to the public safety. As soon as that safety is secured it should terminate.

Your committee came to the consideration of the subject referred to them with the most anxious desire to ascertain what was the condition of the people of the States recently in insurrection, and what, if anything, was necessary to be done before restoring them to the full enjoyment of all their original privileges. It was undeniable that the war into which they had plunged the country had materially changed their relations to the people of the loyal States. Slavery had been abolished by constitutional amendment. A large proportion of the population had become, instead of mere chattels, free men and citizens. Through all the past struggle these had remained true and loyal, and had in large numbers fought on the side of the Union. It was impossible to abandon them without securing them their rights as free men and citizens. The whole civilized world would have cried out against such base ingratitude, and the bare idea is offensive to all right-thinking men. Hence it became important to inquire what could be done to secure their rights, civil and political.

It was evident to your committee that adequate security could only be found in appropriate constitutional provisions. By an original provision of the Constitution, representation is based on the whole number of free persons in each State, and three-fifths of all other persons. When all become free, representation for all necessarily follows. As a consequence, the inevitable effect of

the rebellion would be to increase the political power of the insurrectionary States, whenever they should be allowed to resume their position as States of the Union. As representation is, by the Constitution, based upon population, your committee did not think it advisable to recommend a change of that basis.

The increase of representation necessarily resulting from the abolition of slavery was considered the most important element in the questions arising out of the changed condition of affairs, and the necessity for some fundamental action in this regard seemed imperative. It appeared to your committee that the rights of these persons, by whom the basis of representation had been thus increased, should be recognized by the General Government. While slaves they were not considered as having any rights, civil or political. It did not seem just or proper that all the political advantages derived from their becoming free should be confined to their former masters, who had fought against the Union, and withheld from themselves, who had always been loyal. Slavery, by building up a ruling and dominant class, had produced a spirit of oligarchy adverse to republican institutions, which finally inaugurated civil war. The tendency of continuing the domination of such a class, by leaving it in the exclusive possession of political power, would be to encourage the same spirit and lead to a similar result. Doubts were entertained whether Congress had power even under the amended Constitution to prescribe the qualifications of voters in a State, or could act directly on the subject. It was doubtful, in the opinion of your committee, whether the States would consent to surrender a power they had always exercised, and to which they were attached. As the best, if not the only method of surmounting all difficulty, and as eminently just and proper in itself, your committee comes to the conclusion that political power should be possessed in all the States exactly in proportion as the right of suffrage should be granted without distinction of color or race. This, it was thought, would leave the whole question with the people of each State, holding out to all the advantage of increased political power, as an inducement to allow all to participate in its exercise. Such a provision would be in its nature gentle and persuasive, and would lead, it was hoped, at no distant day, to an equal participation of all, without distinction, in all the rights and privileges of citizenship, thus affording a full and adequate protection to all classes of citizens, since all would have, through the ballot-box, the power of self-protection.

Holding these views, your committee prepared an amendment to the Constitution, to carry out this idea, and submitted the same to Congress. Unfortunately, as we think, it did not receive the necessary constitutional support in the Senate, and therefore could not be proposed for adoption by the States. The principle involved in that amendment is, however, believed to be sound, and your

committee have again proposed it in another form, hoping that it may receive the approbation of Congress.

Your committee have been unable to find in the evidence submitted to Congress by the President, under date of March 6, 1866, in compliance with the resolutions of January 5 and February 27, 1866, any satisfactory proof that either of the insurrectionary States, except perhaps the State of Tennessee, has placed itself in a condition to resume its political relations to the Union. The first step towards that end would necessarily be the establishment of a republican form of government by the people. It has been before remarked, that the provisional governors appointed by the President, in the exercise of his military authority, could do nothing by virtue of the power thus conferred, toward the establishment of a State government. They were acting under the War Department, and were paid out of its funds. They were simply bridging over the chasm between rebellion and restoration. And yet we find them calling conventions and convening Legislatures. Not only this, but we find the conventions and Legislatures thus convened acting under Executive direction as to the provisions required to be adopted in their constitutions and ordinances, as conditions precedent to their recognition by the President. The inducement held out by the President for compliance with the conditions imposed was directly in one instance and presumably therefore in others, the immediate admission of Senators and Representatives to Congress.

The character of the conventions and Legislatures thus assembled was not such as to inspire confidence in the good faith of their members. Gov. Perry, of South Carolina, dissolved the convention assembled in that State before the suggestion had reached Columbia from Washington that the rebel war debt should be repudiated, and gave as his reason that it was a "revolutionary body." There is no evidence of the loyalty or disloyalty of the members of those conventions and Legislatures, except the fact of pardons being asked for on their account. Some of these States now claiming representation refused to adopt the conditions imposed.

No reliable information is found in these papers as to the constitutional provisions of several of these States, while in not one of them is the slightest evidence to show that these "amended constitutions," as they are called, have ever been submitted to the people for their adoption. In North Carolina alone an ordinance was passed to that effect, but it does not appear to have been acted on. Not one of them, therefore, has been ratified. Whether, with President Johnson, we adopt the theory that the old constitutions were abrogated and destroyed, and the people "deprived of all civil government," or whether we adopt the alternative doctrine that they were only suspended, and were revived by the suppression of the rebellion, the new provisions must be considered as equally destitute of validity before adoption by the people.

If the conventions were called for the sole purpose of putting the State government into operation, they had no power either to adopt a new constitution or to amend an old one without the consent of the people. Nor could either a convention or a Legislature change the fundamental law without power previously conferred. In the view of your committee it follows, therefore, that the people of a State, when the constitution has been thus amended, might feel themselves justified in repudiating altogether all such unauthorized assumptions of power, and might be expected to do so at pleasure.

So far as the disposition of the people of the insurrectionary States, and the probability of their adopting measures conforming to the changed condition of affairs, can be inferred from the papers submitted by the President as the basis of his action, the prospects are far from encouraging. It appears quite clear that the anti-slavery amendments, both to the State and Federal constitutions, were adopted with reluctance by the bodies which did adopt them; while in some States they have been either passed by in silence or rejected. The language of all the provisions and ordinances of these States on the subject amounts to nothing more than an unwilling admission of an unwelcome truth. As to the ordinance of secession, it is in some cases declared "null and void," and in others simply "repealed," and in no instance is a refutation of this deadly heresy considered worthy of a place in the new constitution.

If, as the President assumes, these insurrectionary States were, at the close of the war, wholly without State governments, it would seem that before being admitted to participation in the direction of public affairs such governments should be regularly organized. Long usage has established, and numerous statutes have pointed out, the mode in which this should be done. A convention to frame a form of government should be assembled under competent authority. Ordinarily this authority emanates from Congress, but under the peculiar circumstances, your Committee is not disposed to criticise the President's action in assuming the power exercised by him in this regard.

The convention, when assembled, should frame a constitution of government, which should be submitted to the people for adoption. If adopted, a Legislature should be convened to pass the laws necessary to carry it into effect. When a State thus organized claims representation in Congress, the election of representatives should be provided for by law, in accordance with the laws of Congress regulating representation, and the proof that the action taken has been in conformity to law should be submitted to Congress.

In no case have these essential preliminary steps been taken. The conventions assembled seem to have assumed that the Constitutions which had been repudiated and overthrown were still in existence, and operative to constitute the States members of the Union,

and to have contented themselves with such amendments as they were informed were requisite in order to insure their return to an immediate participation in the Government of the United States. Not waiting to ascertain whether the people they represented would adopt even the proposed amendments, they at once ordered elections of Representatives to Congress in nearly all instances before an Executive had been chosen to issue writs of election under the State laws, and such elections as were held were ordered by the Conventions. In one instance, at least, the writs of election were signed by the Provisional Governor. Glaring irregularities and unwarranted assumptions of power are manifest in several cases, particularly in South Carolina, where the Convention, although disbanded by the Provisional Governor, on the ground that it was a revolutionary body, assumed to re-district the State.

It is quite evident from all these facts, and indeed from the whole mass of testimony submitted by the President to the Senate, that in no instance was regard paid to any other consideration than obtaining immediate admission to Congress, under the barren form of an election, in which no precautions were taken to secure regularity of proceedings or the assent of the people. No constitution has been legally adopted, except, perhaps, in the State of Tennessee, and such elections as have been held were without authority of law. Your committee are accordingly forced to the conclusion that the States referred to have not placed themselves in a condition to claim representation in Congress, unless all the rules which have, since the foundation of the Government, been deemed essential in such cases, should be disregarded.

It would undoubtedly be competent for Congress to waive all formalities, and to admit these Confederate States to representation at once, trusting that time and experience would set all things right. Whether it would be advisable to do so, however, must depend upon other considerations, of which it remains to treat. But it may well be observed that the inducements to such a step should be of the very highest character.

It seems to your committee not unreasonable to require satisfactory evidence that the ordinances and constitutional provisions which the President deemed essential in the first instance, will be permanently adhered to by the people of the States seeking restoration after being admitted to full participation in the Government, and will not be repudiated when that object shall have been accomplished. And here the burden of proof rests upon the late insurgents, who are seeking restoration to the rights and privileges which they willingly abandoned, and not upon the people of the United States, who have never undertaken, directly or indirectly, to deprive them thereof. It should appear affirmatively that they are prepared and disposed in good faith to accept the results of the war; to abandon their hostility to the Government, and to live in peace and amity with the people of the loyal States, extending to all

classes of citizens equal rights and privileges, and conforming to the republican idea of liberty and equality.

They should exhibit in their acts something more than unwilling submission to an unavoidable necessity, a feeling, if not cheerful, certainly not offensive and defiant, and they should evince an entire repudiation of all hostility to the General Government, by an acceptance of such just and reasonable conditions as that Government should think the public safety demands. Has this been done? Let us look at the facts shown by the evidence taken by the committee. Hardly is the war closed before the people of these insurrectionary States come forward and haughtily claim as a right the privilege of participating at once in that Government which they had for four years been fighting to overthrow.

Allowed and encouraged by the Executive to organize State governments, they at once place in power leading rebels, unrepentant and unpardoned, excluding with contempt those who had manifested an attachment to the Union, and preferring in many instances those who had rendered themselves the most obnoxious. In the face of the law requiring an oath which would necessarily exclude all such men from Federal offices, they elect with very few exceptions, as Senators and Representatives in Congress, men who had actively participated in the rebellion, insultingly denouncing the law as unconstitutional.

It is only necessary to instance the election to the Senate of the late Vice-President of the Confederacy—a man who, against his own declared convictions, had lent all the weight of his acknowledged ability, and of his influence as a most prominent public man, to the cause of the rebellion, and who, unpardoned rebel as he is, with that oath staring him in the face, had the assurance to lay his credentials on the table of the Senate. Other rebels of scarcely less note or notoriety were selected from other quarters. Professing no repentance; glorying, apparently, in the crime they had committed; avowing still, as the uncontradicted testimony of Mr. Stephens and many others proves, an adherence to the pernicious doctrine of secession, and declaring that they yielded only to necessity, they insist with unanimous voice upon their rights as States, and proclaim that they will submit to no conditions whatever as preliminary to their resumption of power under that Constitution which they still claim the right to repudiate.

Examining the evidence taken by your committee still further, in connection with facts too notorious to be disputed, it appears that the Southern press, with few exceptions, and those mostly of newspapers recently established by Northern men, abound with weekly and daily abuse of the institutions and people of the loyal States; defends the men who led and the principles which incited the rebellion; denounces and reviles Southern men who adhered to the Union, and strives constantly and unscrupulously, by every means in its power, to keep alive the fire of hate and discord between

the sections, calling upon the President to violate his oath of office, overturn the Government by force of arms, and drive the representatives of the people from their seats in Congress. The national banner is openly insulted and the national airs scoffed at, not only by an ignorant populace, but at public meetings, and once, among other notable instances, at a dinner given in honor of a notorious rebel who had violated his oath and abandoned his flag. The same individual is elected to an important office in the leading city of his State, although an unpardoned rebel, and so offensive that the President refuses to allow him to enter upon his official duties. In another State the leading general of the rebel armies is openly nominated for Governor by the Speaker of the House of Delegates, and the nomination is hailed by the people with shouts of satisfaction, and openly endorsed by the press.

Looking still further at the evidence taken by your committee, it is found to be clearly shown by witnesses of the highest character, and having the best means of observation, that the freedmen's bureau, instituted for the relief and protection of freedmen and refugees, is almost universally opposed by the mass of the population, and exists in an efficient condition only under military protection, while the Union men of the South are earnest in its defence, declaring, with one voice, that without its protection the colored people would not be permitted to labor at fair prices, and could hardly live in safety.

They also testify that, without the protection of United States troops, Union men, whether of Northern or Southern origin, would be obliged to abandon their homes. The feeling in many portions of the country toward emancipated slaves, especially among the uneducated and ignorant, is one of vindictive and malicious hatred. This deep-seated prejudice against color is assiduously cultivated by the public journals, and leads to acts of cruelty, oppression and murder, which the local authorities are at no pains to prevent or punish.

There is no general disposition to place the colored race, constituting at least two-fifths of the population, upon terms even of civil equality. While many instances may be found where large planters and men of the better class accept the situation and honestly strive to bring about a better order of things, by employing the freedmen at fair wages and treating them kindly, the general feeling and disposition among all classes are yet totally averse to the toleration of any class of people friendly to the Union, be they white or black, and this aversion is not unfrequently manifested in an insulting and offensive manner.

The witnesses examined as to the willingness of the people of the South to contribute, under existing laws, to the payment of the national debt, prove that the taxes levied by the United States will be paid only on compulsion, and with great reluctance, while there prevails to a considerable extent an expectation that compensation will

be made for slaves emancipated and property destroyed during the war. The testimony on this point comes from officers of the Union army, officers of the late rebel army, Union men of the Southern States and avowed seeessionists, almost all of whom state that, in their opinion, the people of the rebellious States would, if they should see a prospect of suecess, repudiate the national debt. While there is searcely any hope or desire among the leading men to renew the attempt at secession, at any future time, there is still, according to a large number of witnesses—including Alexander H. Stephens, who may be regarded as good authority on that point—a generally-prevailing opinion whieh defends the legal right of secession, and upholds the doctrine that the first allegianee of the people is due to the States, and not to the United States. This belief evidently prevails among leading and prominent men as well as among the masses everywhere, except in some of the northern counties of Alabama and eastern eounties of Tennessee. The evidenee of an intense hostility to the Federal Union, and an equally intense love of the late Confederaey, nurtured by the war, is decisive.

While it appears that nearly all are willing to submit at least for the time being to the Federal authority, it is equally clear that the ruling motive is a desire to obtain the advantages whieh will be derived from a representation in Congress. Officers of the Union army on duty, and Northern men who go South to engage in business, are generally detested and proscribed; Southern men who adhered to the Union are bitterly hated and relentlessly perseeuted.

In some localities prosecutions have been instituted in State courts against Union officers for aets done in the line of official duty, and similar prosecutions are threatened elsewhere as soon as the United States troops are removed. All such demonstrations show a state of feeling against whieh it is unmistakably necessary to guard.

The testimony is eonclusive that after the collapse of the Confederacy the feeling of the people of the rebellious States was that of abject submission. Having appealed to the tribunal of arms, they had no hope except by the magnanimity of their conquerors, their lives and possibly their property might be preserved. Unfortunately, the general issue of pardons to persons who had been prominent in the rebellion, and the feeling of kindliness and conciliation manifested by the Exeeutive, and very generally indieated through the Northern press, had the effect to render whole communities forgetful of the erime they had committed, defiant toward the Federal Government, and regardless of their duties as citizens. The coneiliatory measures of the Government do not seem to have been met even half-way.

The bitterness and defianee exhibited towards the United States under sueh circumstances is without a parallel in the history of the world. In return for our leniency we receive only an insulting denial of our authority. In return for our kind desire for the re-

sumption of fraternal relations we receive only an insolent assumption of rights and privileges long since forfeited. The crime we have punished is paraded as a virtue, and the principles of republican government, which we have vindicated at so terrible a cost, are denounced as unjust and oppressive.

If we add to this evidence the fact that, although peace has been declared by the President, he has not to this day deemed it safe to restore the writ of *habeas corpus* to relieve the insurrectionary States of martial law, nor to withdraw the troops from many localities; and that the commanding general deems an increase of the army indispensable to the preservation of order and the protection of loyal and well-disposed people in the South, the proof of a condition of feeling hostile to the Union and dangerous to the government throughout the insurrectionary States, would seem to be overwhelming. With such evidence before them it is the opinion of your committee—

1. That the States lately in rebellion were, at the close of the war, disorganized communities, without civil governments and without constitutions or other forms by virtue of which political relations could legally exist between them and the Federal Government.

2. That Congress cannot be expected to recognize as valid the election of representatives from disorganized communities which, from the very nature of the case, were unable to present their claims to representation under those established and recognized rules, the observance of which has been hitherto required.

3. That Congress would not be justified in admitting such communities to a participation in the government of the country, without first providing such constitutional or other guarantees as will tend to secure the civil rights of all citizens of the republic, a just equality of representation, protection against claims founded in rebellion and crime, a temporary restoration of the right of suffrage to those who have not actively participated in the effort to destroy the Union and overthrow the Government, and the exclusion from positions of public trust of at least a portion of those whose crimes have proved them to be enemies to the Union and unworthy of public confidence.

Your committee will perhaps hardly be deemed excusable for extending this report further; but inasmuch as immediate and unconditional representation of the States lately in rebellion is demanded as a matter of right, and delay and even hesitation denounced as grossly oppressive and unjust, as well as unwise and impolitic, it may not be amiss again to call attention to a few undisputed and notorious facts, and the principles of public law applicable thereto, in order that the propriety of that claim may be fully considered and well understood.

The State of Tennessee occupies a position distinct from all the other insurrectionary States, and has been the subject of a sepa-

rate report, which your committee have not thought it expedient to disturb. Whether Congress shall see fit to make that State the subject of separate action, or to include it in the same category with all others, so far as concerns the imposition of preliminary conditions, it is not within the province of this committee either to determine or advise. To ascertain whether any of the so-called Confederate States are entitled to be represented in either House of Congress, the essential inquiry is whether there is in any one of them a constituency qualified to be represented in Congress.

The question how far persons claiming seats in either House possess the credentials necessary to enable them to represent a duly qualified constituency, is one for the consideration of each House separately, after the preliminary question shall have been finally determined. We now propose to restate, as briefly as possible, the general facts and principles applicable to all the States recently in rebellion:

1. The seats of the Senators and Representatives from the so-called Confederate States became vacant in the year 1861, during the second session of the Thirty-sixth Congress, by the voluntary withdrawal of their incumbents, with the sanction and by direction of the Legislatures or conventions of their respective States. This was done as a hostile act against the Constitution and Government of the United States, with a declared intent to overthrow the same by forming a Southern Confederation.

This act of declared hostility was speedily followed by an organization of the same States, into a Confederacy, which levied and waged war by sea and land, against the United States. This war continued more than four years, within which period the rebel armies besieged the National Capital, invaded the loyal States, burned their towns and cities, robbed their citizens, destroyed more than 250,000 loyal soldiers, and imposed an increased national burden of not less than 3,500,000,000 dollars, of which seven or eight hundred millions have already been met and paid. From the time these Confederated States thus withdrew their representation in Congress, and levied war against the United States, the great mass of their people became, and were insurgents, rebels, traitors, and all of them assumed and occupied the political, legal and practical relation of enemies of the United States. This position is established by acts of Congress and judicial decisions, and is recognized repeatedly by the President in public proclamations, documents and speeches.

2. The States thus confederated, prosecuted their war against the United States to final arbitrament, and did not cease until all their armies were captured, their military power destroyed, their civil officers, State and Confederate, taken prisoners or put to flight, every vestige of State and Confederate government obliterated, their territory overrun and occupied by the Federal armies, and their people reduced to the condition of enemies conquered in war,

entitled only by public law to such rights, privileges and conditions as might be vouchsafed by the conquerers.

This position is also established by judicial decisions, and is recognized by the President in public proclamations, documents, and speeches.

3. Having voluntarily deprived themselves of representation in Congress for the criminal purpose of destroying the Federal Union, and having reduced themselves, by the act of levying war, to the condition of public enemies, they have no right to complain of temporary exclusion from Congress; but, on the contrary, having voluntarily renounced their right to representation, and disqualified themselves by crime from participating in the Government, the burden now rests upon them, before claiming to be reinstated in their former condition, to show that they are qualified to resume Federal relations.

In order to do this, they must prove that they have established, with the consent of the people, republican forms of government, in harmony with the Constitution and laws of the United States; that all hostile purposes have ceased, and should give adequate guarantees against future treason and rebellion—guarantees which shall prove satisfactory to the Government against which they rebelled, and by whose arms they were subdued.

4. Having by this treason and withdrawal from Congress, and by flagrant rebellion and war, forfeited all civil and political rights and privileges under the Federal Constitution, they can only be restored thereto by the permission and authority of that constitutional power against which they rebelled and by which they were subdued.

5. These rebellious enemies were conquered by the people of the United States, acting through all the co-ordinate branches of the Government, and not by the Executive Department alone. The powers of conqueror are not so vested in the President that he can fix and regulate the terms of settlement, and confer Congressional representation upon conquered rebels and traitors. Nor can he, in any way, qualify enemies of the government to exercise its law-making power. The authority to restore rebels to political power in the Federal Government can be exercised only with the concurrence of all the Departments in which political power is vested, and hence the several proclamations of the President to the people of the Confederate States cannot be considered as extending beyond the purposes declared, and can only be regarded as provisional permission by the commander-in-chief of the army to do certain acts, the effect and validity whereof is to be determined by the constitutional government, and not solely by the Executive power.

6. The question before Congress is, then, whether conquered enemies have the right, and shall be permitted, at their own pleasure, and on their own terms, to participate in making laws for their conquerors; whether conquered rebels may change their thea-

tre of operations from the battle-field, where they were defeated and overthrown, to the halls of Congress, and, through their Representatives, seize upon the Government which they fought to destroy; whether the national treasury, the army of the nation, its navy, its forts and arsenals, its whole civil administration, its credit, its pensioners, the widows and orphans of those who perished in the war, the public honor, peace, and safety, shall all be turned over to the keeping of its recent enemies, without delay, and without imposing such conditions as, in the opinion of Congress, the security of the country and its institutions may demand.

7. The history of mankind exhibits no example of such madness and folly. The instinct of self-preservation protests against it. The surrender by Grant to Lee, and by Sherman to Johnston, would have been disasters of less magnitude; for new armies could have been raised, new battles fought, and the Government saved. The anti-coercive policy which, under pretext of avoiding bloodshed, allowed the rebellion to take form and gather force, would be surpassed in infamy by the matchless wickedness that would now surrender the halls of Congress to those so recently in rebellion until proper precautions shall have been taken to secure the national faith and the national safety.

8. As has been shown in this report, and in the evidence submitted, no proof has been afforded to Congress of a constituency in any one of the so-called Confederate States, unless we except the State of Tennessee, qualified to elect Senators and Representatives in Congress. No State constitution or amendment to a State constitution has had the sanction of the people. All the so-called legislation of State conventions and Legislatures has been had under military dictation. If the President may at his will and under his own authority, whether as military commander or chief Executive, qualify persons to appoint Senators and elect Representatives, and empower others to appoint and elect them, he thereby practically controls the organization of the legislative department. The constitutional form of Government is thereby practically destroyed and its powers absorbed in the Executive. And while your Committee do not for a moment impute to the President any such design, but cheerfully concede to him the most patriotic motives, they cannot but look with alarm upon a precedent so fraught with danger to the Republic.

9. The necessity of providing adequate safeguards for the future, before restoring the insurrectionary States to a participation in the direction of public affairs, is apparent from the bitter hostility to the Government and people of the United States, yet existing throughout the conquered territory, as proved incontestably by the testimony of many witnesses and by undisputed facts.

10. The conclusion of your committee, therefore, is that the so-called Confederate States are not at present entitled to representation in the Congress of the United States; that before allowing

such representation adequate security for future peace and safety should be required; that this can only be found in such changes of the organic law as shall determine the civil rights and privileges of all citizens, in all parts of the Republic; shall place representation on an equitable basis; shall fix a stigma upon treason, and protect the loyal people against future claims for the expenses incurred in support of rebellion and for manumitted slaves, together with an express grant of power in Congress to enforce those provisions. To this end they offer a joint resolution for amending the Constitution of the United States, and the two several bills designed to carry the same into effect, before referred to.

Before closing this report your committee beg leave to state that the specific recommendations submitted by them are the result of mutual concession, after a long and careful comparison of conflicting opinions. Upon a question of such magnitude, infinitely important as it is to the future of the Republic, it was not to be expected that all should think alike. Sensible of the imperfections of the scheme, your committee submit it to Congress as the best they could agree upon, in the hope that its imperfections may be cured and its deficiencies supplied by legislative wisdom, and that when finally adopted it may tend to restore peace and harmony to the whole country, and to place our republican institutions on a more stable foundation.

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JAMES W. GRIMES,
IRA HARRIS,
J. M. HOWARD,
GEO. H. WILLIAMS,
THADDEUS STEVENS,
JUSTIN L. MORRILL,
JOHN A. BINGHAM,
ROSCOE CONKLING,
GEORGE S. BOUTWELL.

JOINT RESOLUTION

Proposing an Amendment to the Constitution of the United States, as passed by Congress, June 13, 1866.

Resolved, By the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring,) That the following article be proposed to the legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

ARTICLE—.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the Executive and Judicial Officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an Executive or Judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

THE TWO BILLS REPORTED BY THE COMMITTEE.

A BILL TO PROVIDE FOR THE RESTORATION OF THE STATES LATELY IN REBELLION TO THEIR FULL POLITICAL RIGHTS.

Whereas, It is expedient that the States lately in insurrection should, at the earliest day, consistent with the future peace and safety of the Union, be restored to full participation in all political rights; *And whereas*, the Congress did, by joint resolution, propose for ratification to the legislatures of the several States, as an amendment to the Constitution of the United States, an article in the following words, to wit: (the constitutional article here inserted,) now, therefore,

Be it enacted, &c. That whenever the above recited amendment shall have become part of the Constitution, and any State lately in insurrection shall have ratified the same, and shall have modified its Constitution and laws in conformity therewith, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress.

Second: And be it further enacted, That when any State lately in insurrection shall have ratified the foregoing proposed amendment to the Constitution, any part of the direct tax, under the act of August 5, 1861, which may remain due and unpaid in such State, may be assumed and paid by such State, and the payment thereof, upon proper assurances from such State, to be given to the Secretary of the Treasury of the United States, may be postponed for a period not exceeding ten years, from and after the passage of this act.

A BILL DECLARING CERTAIN PERSONS INELIGIBLE TO OFFICE UNDER THE GOVERNMENT OF THE UNITED STATES.

Be it enacted, &c., That no person shall be eligible to any office under the Government of the United States, who is included in any of the following classes, namely:

First.—The President and Vice-President of the Confederate States of America, so-called, and the heads of departments thereof.

Second.—Those who in other countries acted as agents of the Confederate States of America, so-called.

Third.—Heads of Departments of the United States, officers of the Army and Navy of the United States, and all persons educated in the Military or Naval Academies of the United States, Judges of the Courts of the United States, and members of either House of the Thirty-sixth Congress of the United States, who gave aid or comfort to the late Rebellion.

Fourth.—Those who acted as officers of the Confederate States of America, so-called, above the grade of colonel in the army, or master in the navy, or any one who, as a Governor of either of the so-called Confederate States, gave aid and comfort to the late Rebellion.

Fifth.—Those who have treated officers or soldiers or sailors of the Army or Navy of the United States, captured during the late war, otherwise than lawfully as prisoners of war.